

**Informal and Unofficial Notes from the ASP Plenary Opening Session:  
23 November 2006, Morning Session**

*These notes are not an official transcript of the meetings, but may serve as an informal and general overview of the proceedings. Please do not use these notes for official purposes.*

*President of the Assembly of States Parties, Ambassador Bruno Stagno Ugarte*

Items critical for the Court:

- First, adoption of the Assembly agenda which was prepared by the Secretariat on the basis of the 4<sup>th</sup> Assembly (ICC-ASP/5/11)
- ICC-ASP/5/29 on Permanent Premises
- ICC-ASP/5/30 on Strategic Plan
- ICC-ASP/5/inf.2 on preliminary paper for the Review Conference
- ICC-ASP/5/25 report on the draft Headquarter Agreement between the ICC and the Host State, annex agreement itself
- and maybe additional items under item 22

**Namibia:**

Before adopting the Agenda we would like to ask for the amendment to the item 20 to put the word “decision” in the singular form and to delete the 2 words “and venue” after the word “decision”, since the decision of the venue of the next session of the Assembly has already been decided.

Adopted.

*President of the Assembly of States Parties, Ambassador Bruno Stagno Ugarte*

For your information, the ASP Secretariat is finalizing a Memorandum of Understanding with the UN in order to comply with the resolution.

Article 1.12 (arrears), paragraph 8 of the Rome Statute is applicable to 4 States Parties (not able to vote) and they may raise to 11 by 1 January 2007. The ASP permits a State Party to vote if the ASP is satisfied with the conditions of inability to pay that are beyond the responsibility of the State Party.

**Agenda Item 6**

The plenary Assembly’s work will focus on:

- Crime of Aggression
- Budget
- Permanent Premises of the Court
- Review Conference
- Omnibus resolution

Then the President pointed out the programme of the Assembly, with the budget as a priority item for the Assembly.

**Agenda Item 10**

*President of the International Criminal Court, Judge Philippe Kirsch*

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I would like to speak about five points:

- The Courts activities
- The role and impact of the ICC
- Importance of cooperation
- The international justice system
- Some specific issues before this ASP

1) The Court activities:

On the other side of The Hague a hearing is taking place on the confirmation of charges against Mr Thomas Lubanga Dyilo. A Pre-Trial Chamber is finding whether or not to confirm the charges before trial.

The Court operates in circumstances very different from any other Court or tribunal being active in situations of ongoing conflict, as war crimes continue to be committed. The Court faces serious logistical problems. The areas are not easy to access and the victims and witnesses often speak just one local language. All these factors can slow down field operations and cause delays in proceedings. Earlier this year the Court adopted its first Strategic Plan which has to be applied to the whole Court. Fundamental priorities are quality and effectiveness of the Court's core activities such as proceedings, outreach, securing cooperation and responsibilities towards participants. An Outreach Strategy has been developed and in 2007 the Court will implement this Plan. The Plan should benefit from the support of the State Parties.

2) The role and impact of the Court:

It is up to those States to evaluate the Court. However, they have to keep in mind the reasons why the Court was established, which are set out in the preamble to the Rome Statute. The role of the Court is to carry out credible and efficient procedures to increase peace. The Court has not completed its first cycle of activities, but there are indicators that the Court is making a difference. The Court operates in a context of conflicts and his role is to build a lasting peace. The extent of the Court's impact depends on many factors, such as building the awareness of the affected population. Local populations have to be able to see and to understand what the Court is. The Court is preparing for future proceedings to be held close to the areas where the crimes occurred.

3) The importance of Cooperation

In establishing the ICC, the States set up a system designed into pillars. The first is the judicial pillar, the Court, and the second is the enforcement pillar, the States. In national systems these two pillars are intertwined. The Court depends on the cooperation of the State Parties. Part IX of the Rome Statute provides a detailed list of types of cooperation that the Court may request from States Parties. The most fundamental need for cooperation is the arrest and surrender of persons, the providing of evidence and assistance with logistics.

First, the States Parties should ensure that they have implemented legislation to comply with their obligation concerning Part IX of the Rome Statute.

Second, States Parties and non-States Parties should ratify the Agreement on Privileges and Immunities of the Court.

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Third, the Court relies on two types of cooperation agreements: (1) relocation of witnesses agreements, which has been concluded by only one State; and (2) other agreements for the enforcement of sentences.

The Court relies not only on the Ministries of Foreign Affairs of States Parties but also of other branches of the government.

4) The broader system of International Justice

This system includes not only the ICC but also other international courts, such as the ad hoc tribunals and hybrid courts. Following the request of the States Parties, the ICC is helping with the trial of Charles Taylor in The Hague by providing premises to the Special Court for Sierra Leone. The ICC does not participate in the discussions on transitional justice, rule of law and peace negotiations, because it is a purely judicial institution. But the outcome of this discussion can have practical implication for cooperation with the Court. The UN has played an important role in ensuring that the principle of accountability for serious international crimes is recognized as a fundamental principle. The Secretary-General has played a leading role as shown by his personal visit to the Court in April this year.

5) Issues before the ASP

The first issue is the proposed budget for 2007. The Court has limited budgetary requests to only those funds which are necessary: one trial in 2007; should other persons be arrested and surrendered to the Court would rely on the contingency fund. The increases are due primarily to existing obligations such as the pensions of the judges, but new resources are requested for operational needs such as field operations and outreach. The CBF has given its recommendations, but the Court knows that in some areas the recommendations need to be reviewed.

Other issues are those pertaining to the Host State, including Headquarters Agreement, Permanent Premises and the Interim Premises. Next year the Court will establish a Project Office for the development of the Permanent Premises. For the Interim Premises, the Host State has identified a new possible solution. The Registrar will elaborate further during his statement at this session.

Conclusion:

In the future there will be a need for increasing cooperation and dialogue between the Court and the States Parties. The Working Groups of the Bureau both in The Hague and New York has facilitated the dialogue in different areas. Realizing the aims of the Rome Statute is a shared responsibility of both the ICC and the State Parties.

*Statement of the Prosecutor of the ICC Mr. Luis Moreno-Ocampo*

**DRC situation:** The confirmation hearing against Mr. Lubanga marks a milestone and sends an indication that using children as soldiers is a very grave war crime that will be prosecuted. The Senior Trial Attorney started the confirmation hearing saying: ‘The case of Lubanga is a case about young children, 7, 8, 9 years old children are the victims of crimes. Many children are abducted from roads, schools and families. The families did not resist because they were threatened with death. Other children joined the FPLC troop voluntarily, because of their desire of revenge against the militias who have been killing their parents. The children were forced to combat on the front lines. The Prosecution will present to the Court details of individual cases of six children whose situation reflects the experience of hundreds of

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children. The first day of the confirmation hearing on 9 November was the first time that the views and concerns of victims could be heard. If the judges confirm the charges the first trial of the Court will be conducted during 2007. A second investigation team is pursuing crimes allegedly committed by another Ituri armed group; we expect to request arrest warrants during the first half of 2007. In addition, the OTP continues in selecting other cases.

**Northern Uganda situation:** Five arrest warrants against LRA commanders have been issued. We are maintaining connection with the witnesses. One of the commanders, Raska Lukwiya, has been killed by the Ugandan Army. The four remaining are still at large, but the Court has made a significant impact on the ground. The Courts investigation has galvanized the activities of the States concerned. Sudan, a non-State party, has voluntarily agreed to enforce the warrants. Crimes allegedly committed by the LRA in Uganda have decreased. A Cessation of Hostilities agreement was signed in August 2006. In October the government of Uganda wrote to the Registry to provide an update on steps taken to execute the warrants. In the past, Joseph Kony, has used negotiations to buy time and attack again. The Court is challenged in securing the arrest of the four remaining commanders, that ensuring that the principle of justice is upheld. The victims have a right to peace, security and justice.

**Darfur situation:** My office is completing the investigation necessary to support the first application naming individuals and selected incidents of crimes. A wide range of evidence has been collected, such as statements by the Sudanese government and by witnesses. There were also documents collected by the international Commission of Inquiry and provided by the National Commission of Inquiry on Darfur. Other evidences have been furnished by NGOs and the UN Security Council. We have had to investigate crimes without going to Darfur, to protect witnesses and victims. Reaching the victims was a priority for my office. We conducted 70 missions in 17 countries, screening hundreds of potential witnesses and conducting more than one hundred formal witness interviews, many of which were with victims. The National Commission of Inquiry established in May 2004 by the Sudanese government reported that from 2003 to 2004 grave human rights breaches were committed by all Parties to the conflict. In May 2006, the government of Sudan provided a written report responding to the questions of the OTP on various phases of the conflict. We also held meetings between representatives of my Office and military officers in Karthoum in June 2006. In August 2006, the government of the Sudan facilitated a mission to Karthoum. Before submitting our evidence to the judges, my office is assessing the admissibility of the case which does not mean a judgment of Sudanese judiciary as a whole. I requested information from the government of the Sudan in order to assess admissibility of the case before proceeding further.

**Other Situation Developments:** My office is also continuing to assess the opening of an investigation in four other situations. In February 2006, my office dismissed the communications related to crimes allegedly committed in Venezuela and crimes allegedly committed by nationals of 2 States Parties in Iraq.

The office continues its preliminary examination of the situation in the Central African Republic. The analysis of this situation is very complex. We have reports of serious crimes, such as hundreds of rapes, killing and looting.

In Cote d'Ivoire the situation is under analysis. My office endeavoured to carry out a mission in Cote d'Ivoire in 2006 for a preliminary examination, but the government postponed the mission.

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Three additional situations are under analysis, but they remain confidential.

**Institutional Developments:** In 2007 my office aims to present a new set of regulations to define standards, operational procedures and internal protocols. The Court has consolidated the independent status of Prosecutor and the neutrality of the Registry. Since January 2006, my Office has worked on a procedural strategy for the next three years focused on five strategic objectives:

- to improve the quality of prosecution;
- to conduct four to six new investigations;
- to gain the cooperation to facilitate effective investigation and arrest operation;
- to improve interaction with the victims; and
- to establish forms of cooperation with States and organisations.

Concerning the budget, the Office is confident that it can carry out its tasks with the current level of resources. This is made possible by a rotational model, whereby joint teams move to different situations or cases. If not sufficient, the Office will ask the ASP if it is willing to provide additional funds in 2007. As the Prosecutor, I would like to emphasize the need for resources for cooperation for the Presidency and my Office and the need for resources for outreach and witness protection in the Registry.

**In Conclusion:** Our common challenge is to move to the implementation in practice of the new system of international justice created in Rome. The focus of the Prosecutor will be on a proper selection of situation and cases, an impartial and independent investigation, a high quality prosecution to end impunity for the most serious crimes.

#### **Agenda Item 14**

*Simone Veil, Chair of the Board of Directors of Trust Fund Victims:* The Board held its meeting in November 2006. There was concern for suffering victims in Uganda, the Democratic Republic of Congo, Central African Republic, and Darfur. We have to send a clear message to the victims to establish an active role of the Trust Fund for Victims in 2007. The fund has a symbolic importance to give support to victims. We should evaluate as soon as possible the request of victims for assistance and the criteria of efficiency. Board members agreed that it is indispensable to have a strategy to decide either to accept or refuse voluntary contribution to the Fund. By now we have 1.9 million Euros in contributions. State Party and NGO donors believe in the importance of victims.

The ASP approved the budget we proposed with the need for a Secretariat of the Board, after our presentation of the annual report of the activities of the Board. We need adequate funds for travel too. We will have a second election of the members of the Board following the geographical distribution criteria and the gender balance. We called upon the Asian States to find a representative after the Queen of Jordan left.

#### **Agenda Item 9: Activities of the Bureau**

*President of the ASP, Ambassador Bruno Stagno Ugarte*

The Bureau had nine (9) meetings in December 2005, two working groups were established, one in the Hague and one in New York. The New York liaison office, under the supervision of the President of the Court, decided on dates and introduced the general debate issue. The Bureau proposed the agenda for procedures and budget and organized the Crime of Aggression meetings. To ensure transparency, the Bureau circulated summaries of its

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statements and decisions. Now a new phase has begun with the arrest warrants. The Secretariat has passed difficult moments.

## **GENERAL DEBATE**

*President of the International Criminal Court, Judge Philippe Kirsch reads Statement sent by UN Secretary General, Kofi Annan.* “In 1998, few would have expected the first trial in 2006 and one warrant for arrest. The ICC is a driving force behind the International Justice system. There has been a strong commitment of the States Parties who are now 104. The ICC is moving toward the ultimate goal of universal jurisdiction. I support the Prosecutor and pledge the UN’s commitment.

The cooperation from the UN is a secondary resort. The primary job is the responsibility of the States Parties.”

### **Serbia**

Mr. President, distinguished Delegates. Thank you for enabling me to participate in the conference. Serbia considers that the establishment of ICC is one of most significant events in development of international law. The ICC plays a significant role, ensuring accountability where national judicial systems have failed. Grave violations will not occur in the future. The tragic experiences in the past provided the need for such a Court, supported by all countries and nations in the world.

It is of crucial importance that State Parties demonstrate upholding and maintaining full and unconditional commitment to the ICC. States Parties will continue to support universal ratification and keep the momentum.

Serbia is one of the ICC founders that experienced tragic experience in the Balkans. Commitment has been taken up explicitly. Relevant amendment of international text of our constitution. The ICTY and the District Court of Belgrade have proven their judicial capability. The District Court of Belgrade expressed readiness to contribute to the establishment of an ICC database that would compile all judicial cases pertaining to the substance of International Criminal Law, such as genocide, war crimes, crime against peace and crime of aggression. Serbia was the first to ratify the Privileges and Immunities protocol. Serbia recalls activities to facilitate work of the Court. At this moment we are negotiating an agreement on victim protection. The Parliament of Serbia has recently adopted a criminal civil code.

Serbia has been a staunch supporter of the establishment of Victims Trust Fund. We are eagerly looking forward to the functioning of the Victim Trust Fund activities. Serbia supports further strengthening of institutional capacity and activities of the ICC and will continue to do so. We thank the members of the Bureau of the ASP.

### **Australia**

Mr. President, I have the honor to speak on behalf of Australia, Canada and New Zealand. Less than 10 years ago a permanent ICC was still a dream and now it is operational. 2006 has been an important year for the ICC for many reasons:

- The First pre-trial proceedings in Darfur;
- The development of the Strategic Plan;

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- The continuation of investigations; and
- Transfer of the first accused to The Hague.

2007 will likely see the commencement of the first few trials of the ICC. The realities of conducting investigations and the violent and insecure circumstances have created some very difficult challenges for the Court. All three of the current investigations are taking place within the context of ongoing conflicts.

All stakeholders need to work together to develop innovative ways to conduct investigations, ensuring effective and efficient investigations. Under unstable and dangerous conditions, the Court must find a way to ensure safety of staff, victims and witnesses.

*Peace and Justice:* Another particularly challenging issue is how to proceed when conflict resolution initiatives are taking place simultaneously with an investigation and prosecution by his office, as is the case with northern Uganda. Justice and peace not incompatible concepts. A negotiated agreement to end the conflict in northern Uganda should include the provisions for those accused of such crimes to be brought to justice in accordance with international standards. The ICC is not participating in the peace process, but must remain independent. We believe that hope has become something tangible in Northern Uganda and the ICC has made an important contribution to it.

*2007 budget:* It is important that ICC receive sufficient resources to do its job. We do not wish to micromanage the ICC. It should be recognized that the ICC has a certain amount of flexibility to move funds within programs. The ICC would provide information on projected budgets. During this assembly, New Zealand, Australia and Canada will present a proposal to affirm that the UN ceiling on assessed contributions applies with respect to contributions of the ICC State Parties. If the Fifth Committee of the General Assembly, which is currently reviewing the UN ceiling will change its level, such a change could also apply to assessed contributions to the ICC. Therefore, adoption of the proposed language would not open a parallel debate on the level of the ceiling in The Hague and in no way would affect or prejudice the outcome of debate in New York.

*Permanent Premises:* We hope that the draft resolution, which proposes to focus on one option a purpose built premises at Alexanderkazerne site will be adopted.

To conclude, we strongly supports the ICC and continue to believe that ratification and implementation of the Rome Statute and the Agreement on Privileges and Immunities of the ICC is the best means of combating impunity and promoting accountability. We hope that the Assembly will be able to adopt the Plan of Action prepared in the New York Working Group. Canada's ICC and accountability campaign is continuing to support projects, providing education and outreach on the Court. The Court needs more than ever the practical, political and moral support of all stakeholders in order to succeed.

**Finland (on behalf of EU)**

The EU, Acceding and Candidate countries, and Potential Countries align themselves with this Statement. The EU is satisfied with the work program of the present session.

The situation in the Democratic Republic of Congo has shown that the ICC has started a new phase with the arrest of Thomas Lubanga and his transfer to the Court in March. The Court's first trial will have a pivotal role in testing the elaborate structure created by the Rome Statute.

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The EU recognizes the complex task of security in Darfur. The EU calls upon all States to comply with the relevant Security Council resolution.

Uganda's situation has shown the difficulties to execute arrest warrants. Peace and justice are not mutually exclusive. The Court cannot operate without cooperation of State Parties. The Court is tailored for skeptical cases only, and States have the primary responsibility to bring perpetrators to justice.

The EU looks forward to the invaluable work of the Coalition for the International Criminal Court.

The EU congratulates the Court for its Strategic Plan, particularly the part concerning budget and premises and welcomes the outreach plan. We look forward to discussing this plan in the next days.

The Rome Statute has given a central role to the victims. The EU invites the State Parties to contribute to the Victim Trust Fund.

### **Spain**

We are pleased that the general debate is on the agenda. We are concerned that this is a crucial moment for ICC (organization, jurisdictional function, Strategic Plan, and the Court capacity model).

We welcome the creation of the liaison office in New York to make the ICC visible. We also welcome the intensified dialogue between the ICC and States Parties. There will be a deep dialogue on the budget and permanent premises.

After three years of work, the Prosecutor presented his strategy. We applaud his efforts for transparency. The ICC should be a Court for exceptional cases. Its jurisdictional function is another added value. The Lubanga case and the current investigations are the first steps. We hope new cases will be open. We are aware of the difficulties faced by the Prosecutor.

There is a need to ensure cooperation with the Court. We must keep in mind that the main agents of the ICC are the States Parties. Between the issues of cooperation with the Court, there is also the issue of the relocation of victims, which is legally difficult. The Assembly could be a good place to exchange views on it.

In regards to the progress made by the jurisdictional function, legal assistance to victims is good news, such as the adoption of rules on Trust Victims Fund. We know we need more contribution. Spain's first contribution is 50,000 Euros.

The Review Conference has an essential role in evaluating the role of the ICC in its first seven years in life.

The member States is now 104. This is important toward the universalization of the ICC. It is also important to continue with ratification. This process needs to be intensified. All States Parties will contribute to achieve this objective. Spain confirms its commitment to ICC.

### **France**

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We welcome this first general debate. France supports the Statement made by the EU. The ICC alone cannot ensure the fight against impunity. There is a broader system concerning particular tribunals. Beyond this, a major step for ICC is not to be used by one way or the other. Its task is immense, as it is a new type of justice. It needs to increase cooperation with all stakeholders.

We gave support to the Trust Victims Fund since its creation.

The support to the Court needed to be not only political and financial, but also in the prosecutions. We provided logistical support to two (2) investigations.

The third aim is to follow the current work on geographical representation and gender balance.

### **Switzerland**

We express our gratitude to the Court for the detailed reports and its extraordinary activity. There is an emergence of an international justice system. Switzerland encouraged the cooperation between ICC and the Special Tribunal for Sierra Leone.

The ICC is an independent Court which goes beyond traditional assistance to build and maintain peace. The role of the ICC must take into account in peacekeeping operations. We have to recognize the concept of the international justice system.

The ICC will not be able to be 100% effective without cooperation with all stakeholders.

Concerning the budget, ICC must have the resources and the permanent premises.

We agree to have a new building in Alexanderkaserne.

### **Ireland**

The ICC has made significant progress:

- The First Strategic Plan
- The Plan on Outreach
- The First Report of the Bureau on Ratification and Implementation

Earlier this week, Ireland ratified the Agreement on Privileges and Immunities. Much is still required to be done as the Court faces ongoing challenges during these early, testing years. How the Court addresses these challenges and how the States Parties support it in its work, will determine the extent to which the natural acclamation which greeted UNGA Resolution 57/23 will have been justified. This is the challenge before the Court and before us.

We have two practical suggestions to enhance the ICC. First, the ICC must rely heavily on the strong cooperation of States Parties. The UN Security Council referral of the situation in Darfur has demonstrated for the first time tangible cooperation between the Council and the Court. We suggest that the Court now needs to deepen its engagement across the range of relevant UN bodies and systems. The ICC should engage systematically at all stages in the work toward and surrounding relevant Security Council resolutions. It could only enhance the Court and the resolutions of the Council, if the Courts role and relevance to crisis situations. The ICC must form part of the conceptual and textual fabric of UN resolutions

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concerned. The machinery of the UN is available to the ICC. The ICC in New York office has an essential capability.

Second, the member States should express a real commitment to action in the UN Security Council in support of the ICC. The Court's New York office should establish itself quickly as an effective link into the UN system, facilitating between the Court and the UN, particularly the Office of Political Affairs, the Department of Peacekeeping Operations and the Office of Legal Affairs. We urge the States Parties to strengthen the ICC's New York office. Final point, we should make clear to UN Member States aspiring to Membership of the Security Council, that in seeking the votes of the wider memberships, they should make absolutely clear to us the commitment to make real contribution in the Council on those issues relevant to the ICC. Elected States to the Security Council could play a very effective and influential role in supporting the Court.

### **Jordan**

The first person arrested pursuant to a warrant issued by the Court has been surrendered to the Court's custody and Pre-Trial and Appeals proceedings are being held. The Court also managed to continue investigations and pre-trial proceedings in the Democratic Republic of Congo, Uganda, Darfur, Sudan, and in this regard Jordan commends the effort undertaken by the Prosecutor, and the members of his Office in conducting investigations and promoting outreach activities related to investigations. We also appreciate their efforts relating to the gathering of evidence and determining facts in areas of ongoing violence, where travelling may be impossible, and in this regard Jordan re-affirms the importance of ending impunity of those who bear the responsibility in all crimes.

The Rome Statute embodies an honorable vision and high aspirations for the work of the Court. It envisions that the Court will contribute in achieving a lasting respect for the enforcement of international criminal justice. Jordan notes with appreciation the first Strategic Plan as a vital experience for the Court in realizing its aims. Jordan also welcomes the Prosecutorial Strategy which was harmonized with the Court's wider Strategic Plan and comprised its five objectives.

Bridging the distance between the Court and local communities affected by the most serious crimes and arrests will reflect positively on the work of the Court. Therefore, Jordan welcomes the Court's efforts in bringing a realistic understanding to these communities regarding its role and activities, especially those related to investigations. Jordan affirms the importance of communicating with all States to increase the trust of the affected communities in the international criminal justice system.

We call upon all States, regional organizations and United Nations peacekeeping missions to engage positively with the Court and provide it with the necessary support in the field. International cooperation is vital for the Court.

Jordan reaffirms the importance of reaching universal ratification of the Rome Statute. We believe that an effective ICC is the national interest of every State.